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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Malcolm Portera
Chancellor and Interim President
The University of Alabama in Huntsville
Office of the President
370 Shelbie King Hall
Huntsville, Alabama 35899

Colleges and Universities - Computer
Equipment - Conveyances - Public Purpose
- University of Alabama in Huntsville

The University of Alabama ("University"
or "UAHuntsville") may obtain and hold
title to surplus computer equipment
transferred from the federal government.

The University may loan the computer
equipment to the Hudson Alpha Institute
for Biotechnology for research use as long
as the Board of Trustees determines that
this public use is best for the purposes of
the University.

Dear Dr. Portera:

This opinion of the Attorney General is issued in response to your
request.

QUESTIONS

(1) Can the University of Alabama acquire
surplus computer equipment from the Department of
Defense pursuant to 10 U.S.C. § 2194?

(2) Can the University of Alabama loan the
computer equipment to the Hudson Alpha Institute for
Biotechnology for use in research benefiting the public
and the University?

FACTS AND ANALYSIS

Your request states that the University seeks to acquire computer equipment that is currently in the possession of the U.S. Army Aviation and Missile Research Development Engineering Center ("AMRDEC"). The computer equipment is what is often referred to as a "supercomputer." The supercomputer has been determined to be surplus by AMRDEC, which proposes to transfer the supercomputer to The University of Alabama in Huntsville ("UAHuntsville") under the terms of an Educational Partnership Agreement that AMRDEC entered into with UAHuntsville on September 5, 2007, pursuant to statutory authority found at 10 U.S.C. § 2194. One of the stated purposes of the Educational Partnership Agreement is transferring to the institution defense laboratory equipment determined by the Director to be surplus.

UAHuntsville plans to indefinitely loan the surplus supercomputer to the Hudson Alpha Institute for Biotechnology ("Hudson Alpha"). Hudson Alpha is the cornerstone of a 150-acre bio-tech campus strategically located in Cummings Research Park, Alabama's largest research park. The nonprofit institute is an integral part of Alabama's life sciences and bio-tech community. There are considerable expenses associated with the transportation, installation, operation, and maintenance of the supercomputer. Hudson Alpha has agreed to pay those expenses. The supercomputer is to be housed in a separate building, and Hudson Alpha is in the process of constructing that facility, which it hopes will be available for use in the fourth quarter of 2011.

Your request also states that the advantages of cooperation between UAHuntsville and Hudson Alpha have long been apparent to both. An affiliation agreement between the two research institutions, outlining various means of cooperation, was first signed in 2008. The supercomputer will provide Hudson Alpha with much needed resources for the ultrahigh-through DNA sequencing research that it conducts in a wide range of biomedical and other life sciences projects. The computer equipment will allow Hudson Alpha and UAHuntsville to extend and expand collaborative relationships. The computer equipment will give the faculty, students, and researchers at UAHuntsville access to the most advanced computational equipment and techniques in genomics research today.

Your first question concerns whether UAHuntsville may obtain and hold title to surplus computer equipment transferred from the federal government. UAHuntsville is a public corporation and instrumentality of the State of Alabama existing under the provisions of section 264 of the Constitution of

Alabama and section 16-47-1, *et seq.*, of the Code of Alabama. ALA. CONST. art. XIV, § 264 (amend. 399); ALA. CODE § 16-47-1 to 16-47-16 (2001).

The University's governing board, the Board of Trustees ("Board"), is constitutionally vested with the management and control of the state university. ALA. CONST. art. XIV, § 264 (amend. 399). Statutorily, the Board has "all the rights, powers and franchises necessary to or promotive of the end of its creation . . ." ALA. CODE § 16-47-2 (2001).

Section 16-47-3 of the Code provides that the Board:

may hold and may lease, sell or in any other manner not inconsistent with the object or terms of the grant or grants under which it holds dispose of any property, real or personal, or any estate or interest therein, remaining of the original or any subsequent grant by Congress, or by this state, or by any person, or accruing to the corporation from any source, including also the proceeds of the University Fund, as to it may seem best for the purposes of its institution.

ALA. CODE § 16-47-3 (2001).

This Office has previously stated that the powers of the University include "the right to acquire property and construct whatever buildings that promote the functioning of the campuses of the University of Alabama System." Opinion to Honorable Thomas A. Bartlett, Chancellor, University of Alabama System, dated January 4, 1988, A.G. No. 88-00100. This Office has also previously authorized the University of Alabama to accept donated real property from the National Park Service and to dedicate the use of that property to a public park in the City of Tuscaloosa if the Board determined that the public use was best for the purposes of the University of Alabama. Opinion to Honorable Robert E. Witt, President, University of Alabama, dated February 11, 2009, A.G. No. 2009-042.

Your second question asks whether the University may loan the computer equipment to the Hudson Alpha Institute for Biotechnology for research, which will benefit the purposes of UAHuntsville and the public of the State of Alabama. This Office has previously determined that Alabama State University may designate land to be used as a public Civil Rights Interpretive Center provided that the board of trustees makes a determination that the property will be used in a manner that is best for the purposes of the University. Opinion to Honorable Joe A. Lee, President, Alabama State University, dated October 31,

2007, A.G. No. 2008-011. Alabama State University is given the statutory authority to control and manage property as it may "deem best for the purposes of the university." ALA. CODE § 16-50-22 (2001). Similarly, the Board of Trustees of the University of Alabama is given the power to control and manage its property as it determines "may seem best for the purposes of its institution." ALA. CODE § 16-47-3 (2001).

The previously cited opinion allowing the University of Alabama to accept land donated by the federal government and dedicate the use of that land for a public park is also applicable to the second part of your question. *See, generally, Witt.* Accordingly, it is the opinion of this Office that the University can receive surplus computer equipment from the federal government and then loan that equipment to the Hudson Alpha Institute for Biotechnology for research benefiting the public, as long as the Board determines that such use is in the best interests of the University.

CONCLUSION

The University of Alabama may obtain and hold title to a surplus supercomputer from the federal government.

UAHuntsville may loan the supercomputer to the Hudson Alpha Institute for Biotechnology for research purposes benefiting UAHuntsville and the public, as long as the Board determines that this use is best for the purposes of UAHuntsville.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division